80-6243

NO. A-535

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

KAREN HELLER AND EARL HELLER,

APPELLANTS

V.

HANCOCK COUNTY CHILDREN SERVICES BOARD, ET AL,

APPELLEES

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS

AND

MOTION TO AFFIRM JUDGMENT OF LOWER COURTS

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MOTION TO DISMISS

The issues presented in this matter are moot as Johnny Steven Heller, the child subject of the action presented to this Honorable Court, has legally been adopted by way of proceedings in the Hancock County, Ohio, Common Pleas Court, Probate Division, being captioned as Case No. 80-471. The adoption took place on November 7, 1980 while no proceedings were pending in any court as related to the rights of Karen Heller and Earl Heller, Appellants herein.

Therefore, the issues presented in the specific case before this Honorable Court are moot.

Further, the issues presented herein are moot as a result of legislation passed by the Ohio Legislature, being Amended Substitute House Bill No. 695 which became effective November 24, 1980 (See Appendix 1), which sets forth proceedings for the exploration or exhaustion of less drastic alternatives before resorting to permanent termination of parental rights.

The issues presented by way of the Jurisdictional Statement of Appellants are therefore moot, and jurisdiction of the Supreme Court of the United States should be denied.

The basis of an action in dependency within the State of Ohio relates to the environment of the child and not the culpable acts of the parents.

In re Infant East, 61 O.O. 2d 38, Syllabus 2, states that:

> "The crux of a dependency action is the condition of environment of the child, not the culpable acts of the parents."

Therefore, since the basis of a dependency action does not require culpable actions by the parents but relates to environment, the parents do not require a warning regarding prohibitions as alluded to in Appellants' argument. Thus, there is no violation of the Fourteenth Amendment.

Further, Appellants attempt to place all responsibility upon the Hancock County Children Services Board for placing the child within the custody of the parents. The complete record in this matter indicates that the parents did not take affirmative steps to secure the return of their child. Any delays on the behalf of the Hancock County Children Services Board were an attempt to define the parents' true attitude toward the return of their child, and they took no positive steps to secure same.

A statute similar to the Ohio statute has been affirmed by the Kansas Supreme Court. (See In re Brooks, decided November 11, 1980, at 7 Family Law Review, Page 2046.) The Kansas Supreme Court affirmed the right of a child welfare agency to take permanent custody under a statute similar to the Ohio statute, and further indicated that the termination of parental rights is dispositional in nature as opposed to definitive of required actions of the parents. The Kansas Supreme Court found that their statute did not violate the due process clause of the Fourteenth Amendment to the United States Constitution even though it did not incorporate a doctrine of least restrictive alternatives. The decision indicated that the parents must cooperate with the agency and show a desire to have a child returned to their custody.

CONCLUSION

For the foregoing reasons, the judgment of the lower Courts should be affirmed and jurisdiction of this matter should be denied.

Respectfully submitted,

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(Amended Substitute House Bill No. 662)

File 356

AN ACT

eff. 10-24-80

To amend sections 2151.011, 2151.281, 2151.35, 2151.353, 2151.38, and 5103.151, and to enact sections 2151.412, 2151.413, and 2151.414 of the Revised Code to authorize a juvenile court to grant permanent custody of a child to an agency to which it had previously granted temporary custody of the child upon application of the agency and a finding by the court that the child's parents have acted, and will continue to act, in such a manner that the child is without proper parental care or guardianship and to require certain reports and treatment plans to be filed by agencies that want to have or have temporary custody of certain children.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2151.011, 2151.281, 2151.35, 2151.353, 2151.38, and 5103.151 be amended and sections 2151.412, 2151.413, and 2151.414 of the Revised Code be enacted to read as follows:

Sec. 2151.011. (A) As used in the Revised Code:

(1) "Juvenile court" means the division of the court of common pleas or a juvenile court separately and independently created having jurisdiction under Chapter 2151. of the Revised Code.

(2) "Juvenile judge" means a judge of a court having jurisdiction under Chapter 2151. of the Revised Code.

(B) As used in ~~sections 2151.01 to 2151.99, inclusive, of the Revised Code~~ THIS CHAPTER:

(1) "Child" means a person who is under the age of eighteen years, with the exception that any child who violates a federal or state law or municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of his age at the time the complaint is filed or hearing had thereon.

(2) "Adult" means an individual eighteen years of age or older.

(3) "Detention" means the temporary care of children in restricted facilities pending court adjudication or disposition.

(4) "Shelter" means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.

(5) "Foster home" means a family home in which any child is received apart from his parents for care, supervision, or training.

(6) "Certified foster home" means a foster home operated by persons holding a permit in force, issued under sections 5103.03 to 5103.05, ~~inclusive~~, of the Revised Code.

(7) "Approved foster care" means facilities approved by the youth commission under sections 5139.36 to 5139.40 ~~inclusive~~, of the Revised Code.

(8) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in foster homes or elsewhere.

(9) "Certified organization" means any organization mentioned under division (B)(8) of this section which holds a certificate in force, issued under sections 5103.03 to 5103.05 ~~inclusive~~, of the Revised Code.

(10) "Legal custody" means a legal status created by court order which vests in the custodian the right to have physical care and control of the child and to determine where and with whom he shall live, and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(11) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the person, including but not necessarily limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(12) "Permanent custody" means a legal status created by the court which vests in the county department of welfare which has assumed the administration of child welfare, county welfare CHILDREN SERVICES board, or certified organization, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(13) "Temporary custody" means legal custody as defined in division (B) (10) of this section which may be terminated at any time at the discretion of the court.

(14) "Commit" means to vest custody as ordered by the court.

(15) "Probation" means a legal status created by court order following an adjudication that a child is delinquent, a juvenile traffic offender, or unruly whereby the child is permitted to remain in the parent's, guardian's, or custodian's home subject to supervision, or under the supervision of any agency designated by the court and returned to the court for violation of probation at any time during the period of probation.

(16) "Protective supervision" means a legal status created by court order whereby the child is permitted to remain in the parent's, guardian's, or custodian's home under supervision and subject to return to the court during the period of protective supervision.

(17) "ADEQUATE PARENTAL CARE" MEANS THE PROVISION OF ADEQUATE FOOD, CLOTHING, AND SHELTER TO ENSURE A CHILD'S HEALTH AND PHYSICAL SAFETY AND THE PROVISION OF SPECIALIZED SERVICES WARRANTED BY A CHILD'S PHYSICAL OR MENTAL NEEDS.

• Sec. 2151.281. The court shall appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent, OR unruly ~~or dependent~~ child when:

(A) The child has no parent, guardian, or legal custodian;

(B) The court finds that there is a conflict of interest between the child and his parent, guardian, or legal custodian.

The court shall appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged abused or neglected child, AND IN ANY PROCEEDING HELD PURSUANT TO SECTION 2151.414 OF THE REVISED CODE.

In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child where the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of such parent.

The court shall require such guardian ad litem to faithfully discharge his duties, and upon his failure to do so shall discharge him and appoint another. The court may fix compensation for the service of the guardian ad litem which shall be paid from the treasury of the county.

A parent who is eighteen years of age or older and not mentally incompetent shall be deemed sui juris for the purpose of any proceeding relative to his child alleged or adjudicated to be an abused, neglected, or dependent child.

In any case wherein a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under eighteen years of age, the parents of said parent shall be summoned to appear at any hearing respecting the alleged or adjudicated to be an abused, neglected, or dependent child.

• Sec. 2151.35. The juvenile court may conduct its hearings in an informal manner and may adjourn such hearings from time to time. In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case.

All cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury.

If the court finds from clear and convincing evidence that the child is a ~~delinquent, unruly,~~ AN abused, neglected, or dependent child, or FINDS BEYOND A REASONABLE DOUBT THAT THE CHILD IS A DELINQUENT OR UNRULY CHILD OR a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under sections 2151.352 to 2151.355 of the Revised Code. If the court does not so find, it shall order that the complaint be dismissed and that the child be discharged from any detention or restriction theretofore ordered.

A record of all testimony and other oral proceedings in juvenile court shall be made IN ALL PROCEEDINGS THAT ARE HELD PURSUANT TO SECTION 2151.414 OF THE REVISED CODE OR IN WHICH AN ORDER OF DISPOSITION MAY BE MADE PURSUANT TO DIVISION(A)(4) OF SECTION 2151.353 OF THE REVISED CODE, AND SHALL BE MADE upon request IN ANY OTHER PROCEEDINGS. THE RECORD SHALL BE MADE as provided in section 2301.20 of the Revised Code.

• Sec. 2151.353. (A) If the child is adjudged an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

~~(A)~~ (1) Permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

~~(B)~~ (2) Commit the child to the temporary custody of the department of public welfare, a county department of welfare which has assumed the administration of child welfare, county children services board, any other certified organization, the Ohio youth commission for the purpose of diagnostic study and report as provided by division (B) of section 5139.05 of the Revised Code, either parent or a relative residing within or outside the state, or a probation officer for placement in a certified foster home;

~~(C)~~ (3) Commit the child to the temporary custody of any institution or agency in this state or another state authorized and qualified to provide the care, treatment, or placement that the child requires;

~~(D)~~ (4) Commit the child permanently to THE PERMANENT CUSTODY OF the county department of welfare which has assumed the administration of child welfare, county children services board, or to any other certified agency ORGANIZATION, IF THE COURT DETERMINES THAT THE PARENTS HAVE ACTED IN SUCH A MANNER THAT THE CHILD IS A CHILD WITHOUT ADEQUATE PARENTAL CARE, IT IS LIKELY THAT THE PARENTS WOULD CONTINUE TO ACT IN SUCH A MANNER THAT THE CHILD WILL CONTINUE TO BE A CHILD WITHOUT ADEQUATE PARENTAL CARE IF A REUNIFICATION PLAN WERE PREPARED PURSUANT TO SECTION 2151.412 OF THE REVISED CODE, AND THE PERMANENT COMMITMENT IS IN THE BEST INTERESTS OF THE CHILD. IF THE COURT GRANTS PERMANENT CUSTODY UNDER THIS DIVISION, THE COURT, UPON THE REQUEST OF ANY PARTY, SHALL FILE A WRITTEN OPINION SETTING FORTH ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW IN RELATION TO THE PROCEEDING. Upon such commitment the natural or adoptive parents are divested of all legal rights and obligations due from them to the child or from the child to them.

(B) No order for permanent custody shall be made at the hearing wherein AT WHICH the child is adjudicated abused, neglected, or dependent except and unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting such permanent custody and the summons served on the parents contains a full explanation that the granting of such an order FOR PERMANENT CUSTODY permanently divests them of their parental rights AND CONTAINS A FULL EXPLANATION OF THEIR RIGHT TO BE REPRESENTED BY COUNSEL AND TO HAVE COUNSEL APPOINTED PURSUANT TO CHAPTER 120. OF THE REVISED CODE IF THEY ARE INDIGENT.

IF AFTER MAKING DISPOSITION AS AUTHORIZED BY DIVISION (A)(2) OR (3) OF THIS SECTION, A MOTION IS FILED IN ACCORDANCE WITH SECTION 2151.413 OF THE REVISED CODE, WHICH MOTION REQUESTS PERMANENT CUSTODY OF THE CHILD, THE COURT MAY GRANT PERMANENT CUSTODY OF THE CHILD TO THE MOVANT IN ACCORDANCE WITH SECTION 2151.414 OF THE REVISED CODE.

(C) NO ORDER OF TEMPORARY CUSTODY SHALL BE MADE UNLESS THE SUMMONS SERVED ON THE PARENTS CONTAINS A STATEMENT THAT AN ADJUDICATION OF ABUSE, NEGLECT, OR DEPENDENCY MAY RESULT IN AN ORDER OF TEMPORARY CUSTODY, A FULL EXPLANATION THAT THE GRANTING OF AN ORDER OF TEMPORARY CUSTODY WILL CAUSE THE REMOVAL OF THE CHILD FROM THEIR LEGAL CUSTODY UNTIL THE COURT TERMINATES THE ORDER OF TEMPORARY CUSTODY OR PERMANENTLY DIVESTS THEM OF THEIR PARENTAL RIGHTS, AND A FULL EXPLANATION OF THEIR RIGHT TO BE REPRESENTED BY COUNSEL AND TO HAVE COUNSEL APPOINTED PURSUANT TO

CHAPTER 120. OF THE REVISED CODE IF THEY ARE INDIGENT.

• Sec. 2151.28. When a child is committed to the legal custody of the youth commission, or to the permanent custody of a county department of welfare which THAT has assumed the administration of child welfare, A county children services board, or A certified organization OR COMMITTED PURSUANT TO DIVISION (A) (4) OF SECTION 2151.353 OR 2151.44 OF THE REVISED CODE, the jurisdiction of the juvenile court in respect to the child so committed shall cease and terminate at the time of commitment, except that if the department or any county department, board, or certified organization having such permanent custody makes application A MOTION to the court for the termination of such PERMANENT custody, the court upon such application THE MOTION, after notice and hearing and for good cause shown, may terminate such PERMANENT custody at any time prior to the child becoming of age. The court shall make disposition of the matter in whatever manner will serve the best interests of the child. All other commitments made by the court shall be temporary and shall continue for such A period as THAT IS designated by the court in its order, or until terminated or modified by the court, or until a child attains the age of twenty-one years.

• Sec. 2151.412. (A) WHEN A CHILD IS ADJUDICATED AN ABUSED, NEGLECTED, OR DEPENDENT CHILD AND THE COURT, PURSUANT TO DIVISION (A)(2) OR (3) OF SECTION 2151.353 OF THE REVISED CODE, ORDERS COMMITMENT OF THE CHILD TO THE TEMPORARY CUSTODY OF THE DEPARTMENT OF PUBLIC WELFARE, A COUNTY DEPARTMENT OF WELFARE THAT HAS ASSUMED THE ADMINISTRATION OF CHILD WELFARE, A COUNTY CHILDREN SERVICES BOARD, OR ANY CERTIFIED ORGANIZATION, THE DEPARTMENT, COUNTY DEPARTMENT, BOARD, OR ORGANIZATION SHALL SUBMIT AN INITIAL PLAN TO THE COURT, AFTER A REASONABLE ATTEMPT TO CONSULT WITH ALL PARTIES, WHICH INITIAL PLAN SHALL BE PREPARED IN ACCORDANCE WITH DIVISION (B) OF THIS SECTION. THE COURT SHALL APPROVE AN INITIAL PLAN PRIOR TO THE EXECUTION OF THE ORDER OF DISPOSITION OF THE CHILD. THE APPROVED INITIAL PLAN SHALL BE INCORPORATED INTO THE JUDGMENT ENTRY SETTING FORTH THE DISPOSITION MADE OF THE CHILD, AND COPIES OF THE JUDGMENT ENTRY SHALL BE SENT TO ALL PARTIES.

(B) THE INITIAL PLAN SUBMITTED TO THE COURT AS REQUIRED BY DIVISION (A) OF THIS SECTION SHALL INCLUDE ONE OF THE FOLLOWING:

(1) IF THE CHILD IS NOT ABANDONED OR ORPHANED OR IF THE PARENTS OF AN ABANDONED CHILD ARE LOCATED, THE FOLLOWING:

(a) A SCHEDULE FOR REGULAR AND FREQUENT CONSULTATION BETWEEN THE PARENTS AND THE DEPARTMENT, COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION TO WHICH THE CHILD IS TEMPORARILY COMMITTED;

(b) IF THE CHILD IS TO BE REMOVED FROM THE HOME, THE FOLLOWING:

(i) A PARENT AND CHILD VISITATION SCHEDULE THAT BEGINS AS SOON AS POSSIBLE AND THAT PROVIDES FOR REGULAR AND FREQUENT VISITATION AND COMMUNICATION OR OTHER CONTACT BETWEEN THE PARENTS AND CHILD, WHICH SCHEDULE SHALL INCLUDE ONLY SUPERVISED VISITATION IF UNSUPERVISED VISITATION MAY RESULT IN HARM TO THE CHILD;

(ii) A PAYMENT SCHEDULE, BASED UPON THE PARENTS' ABILITY TO PAY, THAT PROVIDES FOR PAYMENT BY THE PARENTS OF THE COST OF THE SUBSTITUTE PHYSICAL CARE AND MAINTENANCE GIVEN TO THE CHILD BY THE DEPARTMENT, COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION TO WHICH THE CHILD IS TEMPORARILY COMMITTED;

(2) IF THE CHILD IS ABANDONED AND THERE HAS BEEN NO CONTACT WITH THE PARENTS, THE EFFORTS THAT WILL BE TAKEN TO LOCATE THE PARENTS AND WHO WILL MAKE THE EFFORTS. IF THE PARENTS ARE LOCATED, A REVISED INITIAL PLAN SHALL BE SUBMITTED TO THE COURT, AND THE REVISED PLAN SHALL COMPLY WITH DIVISION (B)(1) OF THIS SECTION.

(3) IF THE CHILD IS ORPHANED, THE EFFORTS THAT WILL BE TAKEN TO DETERMINE WHETHER ANY LIVING RELATIVES OF THE CHILD ARE WILLING AND ABLE TO ACCEPT PERMANENT CUSTODY OF THE CHILD AND WHO WILL MAKE THE EFFORTS.

(C) THE DEPARTMENT, COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION THAT HAS TEMPORARY CUSTODY OF A CHILD WHO IS NOT ABANDONED OR ORPHANED OR CUSTODY OF A CHILD FOR WHOM A REVISED INITIAL PLAN IS SUBMITTED PURSUANT TO DIVISION (B)(2) OF THIS SECTION SHALL, WITHIN SIXTY DAYS AFTER THE ISSUANCE OF THE TEMPORARY CUSTODY ORDER OR SIXTY DAYS AFTER APPROVAL OF THE REVISED INITIAL PLAN, PREPARE AND FILE WITH THE COURT A COMPREHENSIVE REUNIFICATION PLAN FOR THE CHILD, WHICH PLAN SHALL BE PREPARED IN ACCORDANCE WITH DIVISION (D) OF THIS SECTION. THE COMPREHENSIVE PLAN SHALL BE DESIGNED TO REHABILITATE AND REUNITE THE CHILD'S FAMILY. THE COURT SHALL PROVIDE A COPY OF THE COMPREHENSIVE REUNIFICATION PLAN TO ALL PARTIES IN THE ACTION, AND ANY PARTY TO THE ACTION MAY, WITHIN SEVEN DAYS AFTER RECEIVING A COPY OF THE PLAN, FILE AN OBJECTION TO THE PLAN. IF ANY PARTY FILES AN OBJECTION TO THE PLAN, THE COURT SHALL CONSIDER THE ISSUES RAISED BY THE OBJECTION, AND MAY HOLD A HEARING ON THE OBJECTION WITHIN FOURTEEN DAYS AFTER IT IS FILED. WHEN ALL ISSUES WITH RESPECT TO THE PLAN ARE RESOLVED, THE COURT SHALL APPROVE THE PLAN AND INCORPORATE THE PLAN INTO THE JUDGMENT ENTRY SETTING FORTH THE DISPOSITION MADE OF THE CHILD.

(D) THE COMPREHENSIVE REUNIFICATION PLAN SUBMITTED TO THE COURT AS REQUIRED BY DIVISION (C) OF THIS SECTION SHALL INCLUDE ALL OF THE FOLLOWING:

(1) THE SERVICES OR TREATMENT THAT WILL BE PROVIDED OR OFFERED TO THE CHILD'S PARENTS TO FACILITATE REHABILITATION;

(2) THE ACTIONS THAT THE PARENTS ARE REQUIRED TO TAKE TO ADJUST THEIR CONDUCT OR CONDITIONS SO THAT THE CHILD WILL NO LONGER BE WITHOUT ADEQUATE PARENTAL CARE;

(3) THE SERVICES OR TREATMENT THAT WILL BE PROVIDED OR OFFERED TO THE CHILD;

(4) THE REQUIREMENTS OF DIVISION (B)(1) OF THIS SECTION.

(E) ANY PARTY TO THE ACTION AND THE COURT MAY FILE A MOTION WITH THE COURT REQUESTING THAT AN INITIAL PLAN OR COMPREHENSIVE REUNIFICATION PLAN PREPARED PURSUANT TO THIS SECTION BE MODIFIED. THE COURT SHALL NOTIFY ALL PARTIES TO THE ACTION THAT THE MOTION HAS BEEN FILED, AND ANY PARTY TO THE ACTION MAY, WITHIN SEVEN DAYS AFTER RECEIVING THE NOTICE, FILE AN OBJECTION TO THE MOTION. THE COURT SHALL INCORPORATE THE MODIFICATION OF THE PLAN INTO THE JUDGMENT ENTRY SETTING FORTH THE DISPOSITION MADE OF THE CHILD IF NO OBJECTION TO THE MODIFICATION IS FILED WITHIN THE SEVEN-DAY PERIOD. IF ANY PARTY FILES AN OBJECTION TO THE MODIFIED PLAN, THE COURT SHALL CONSIDER THE ISSUES RAISED BY THE OBJECTION, AND MAY HOLD A HEARING ON THE MODIFIED PLAN WITHIN FOURTEEN DAYS AFTER THE OBJECTION IS FILED. IF THE COURT APPROVES ANY MODIFICATION OF THE INITIAL PLAN OR THE COMPREHENSIVE REUNIFICATION PLAN, THE COURT SHALL INCORPORATE THE MODIFICATION OF THE PLAN INTO THE JUDGMENT ENTRY SETTING FORTH THE DISPOSITION MADE OF THE CHILD.

• Sec. 2151.413. (A) A COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION THAT IS GRANTED TEMPORARY CUSTODY PURSUANT TO AN ORDER OF DISPOSITION UNDER DIVISION (A)(2) OR (3) OF SECTION 2151.353 OF THE REVISED CODE OF A CHILD THAT IS NOT ABANDONED OR ORPHANED OR OF AN ABANDONED CHILD WHOSE PARENTS HAVE BEEN LOCATED MAY FILE A MOTION IN THE COURT THAT MADE THE DISPOSITION OF THE CHILD REQUESTING PERMANENT CUSTODY OF THE CHILD IF A PERIOD OF AT LEAST SIX MONTHS HAS ELAPSED SINCE THE ORDER OF TEMPORARY CUSTODY WAS ISSUED OR THE SUBMISSION OF THE REVISED INITIAL PLAN IF THE CHILD IS AN ABANDONED CHILD WHOSE PARENTS HAVE BEEN LOCATED.

(B) A COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION THAT IS GRANTED TEMPORARY CUSTODY PURSUANT TO AN ORDER OF DISPOSITION UNDER DIVISION (A)(2) OR (3) OF SECTION 2151.353 OF THE REVISED CODE OF A CHILD THAT IS ABANDONED OR ORPHANED MAY FILE A MOTION IN THE COURT THAT MADE THE DISPOSITION OF THE CHILD REQUEST-

ING PERMANENT CUSTODY OF THE CHILD, IF THE CHILD IS ABANDONED, WHENEVER IT CAN SHOW THE COURT THAT THE PARENTS CANNOT BE LOCATED AND, IF THE CHILD IS ORPHANED, WHENEVER IT CAN SHOW THAT NO RELATIVE OF THE CHILD IS ABLE TO TAKE PERMANENT CUSTODY OF THE CHILD.

• Sec. 2151.414. (A) UPON THE FILING OF A MOTION FOR PERMANENT CUSTODY OF A CHILD BY A COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION THAT HAS TEMPORARY CUSTODY OF THE CHILD, THE COURT SHALL GIVE NOTICE OF THE FILING OF THE MOTION AND OF THE HEARING, IN ACCORDANCE WITH SECTION 2151.29 OF THE REVISED CODE, TO ALL PARTIES TO THE ACTION, WHICH NOTICE SHALL CONTAIN A FULL EXPLANATION THAT THE GRANTING OF PERMANENT CUSTODY PERMANENTLY DIVESTS THE PARENTS OF THEIR PARENTAL RIGHTS AND A FULL EXPLANATION OF THEIR RIGHT TO BE REPRESENTED BY COUNSEL AND TO HAVE COUNSEL APPOINTED PURSUANT TO CHAPTER 120. OF THE REVISED CODE IF THEY ARE INDIGENT, AND SHALL CONDUCT A HEARING TO DETERMINE ALL OF THE FOLLOWING:

(1) IF THE COUNTY DEPARTMENT, BOARD, OR CERTIFIED ORGANIZATION HAS MADE A GOOD FAITH EFFORT TO IMPLEMENT THE INITIAL AND COMPREHENSIVE REUNIFICATION PLANS FOR THE CHILD THAT WERE APPROVED BY THE COURT PURSUANT TO SECTION 2151.412 OF THE REVISED CODE;

(2) IF THE PARENTS HAVE ACTED IN SUCH A MANNER THAT THE CHILD IS A CHILD WITHOUT ADEQUATE PARENTAL CARE, AND WILL CONTINUE TO ACT IN THE NEAR FUTURE IN SUCH A MANNER THAT THE CHILD WILL CONTINUE TO BE A CHILD WITHOUT ADEQUATE PARENTAL CARE. IN MAKING THIS DETERMINATION, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO, THE FOLLOWING CONSIDERATIONS:

(a) THE EXTENT TO WHICH THE PARENTS OF THE CHILD HAVE CONFORMED TO THE INITIAL AND COMPREHENSIVE PLANS FOR THE CHILD THAT WERE APPROVED BY THE COURT PURSUANT TO SECTION 2151.412 OF THE REVISED CODE AND THE EXTENT TO WHICH THE PARENTS HAVE FULFILLED THEIR OBLIGATIONS UNDER THE PLANS;

(b) ANY EXISTING EMOTIONAL OR MENTAL DISORDERS OF THE PARENTS AND THE ANTICIPATED DURATION OF THE DISORDERS;

(c) ANY PHYSICAL, EMOTIONAL, OR SEXUAL ABUSE OF THE CHILD BY THE PARENTS THAT OCCURS BETWEEN THE DATE THAT THE ORIGINAL COMPLAINT ALLEGING ABUSE WAS FILED AND THE DATE OF THE FILING OF THE MOTION FOR PERMANENT CUSTODY;

(d) ANY EXISTING EXCESSIVE USE OF INTOXICATING LIQUOR OR DRUGS OF ABUSE BY THE PARENTS;

(e) ANY PHYSICAL, EMOTIONAL, OR MENTAL NEGLECT OF THE CHILD BY THE PARENTS THAT OCCURS BETWEEN THE DATE THAT THE ORIGINAL COMPLAINT ALLEGING NEGLECT WAS FILED AND THE DATE OF THE FILING OF THE MOTION FOR PERMANENT CUSTODY.

(3) IF IT IS IN THE BEST INTEREST OF THE CHILD TO PERMANENTLY TERMINATE PARENTAL RIGHTS.

(B) THE COURT MAY GRANT PERMANENT CUSTODY OF A CHILD TO A MOVANT IF THE COURT DETERMINES AT THE HEARING HELD PURSUANT TO DIVISION (A) OF THIS SECTION, BY CLEAR AND CONVINCING EVIDENCE, THAT THE CHILD IS NOT ABANDONED OR ORPHANED AND THE PARENTS HAVE ACTED IN SUCH A MANNER THAT THE CHILD IS A CHILD WITHOUT ADEQUATE PARENTAL CARE, AND WILL CONTINUE TO ACT IN THE NEAR FUTURE IN SUCH A MANNER THAT THE CHILD WILL CONTINUE TO BE A CHILD WITHOUT ADEQUATE PARENTAL CARE, THAT THE CHILD IS ABANDONED AND THE PARENTS CANNOT BE LOCATED, OR THAT THE CHILD IS ORPHANED AND THERE ARE NO RELATIVES OF THE CHILD WHO ARE ABLE TO TAKE PERMANENT CUSTODY. THE COURT MAY CONSIDER THE WISHES OF THE CHILD IN RELATION TO THE MOTION FOR PERMANENT CUSTODY AND THE CUSTODIAL HISTORY OF THE CHILD AS FACTORS IN MAKING ITS DETERMINATION, BUT THE WISHES AND CUSTODIAL HISTORY OF THE CHILD SHALL NOT CONTROL THE DECISION OF THE COURT. IF THE COURT GRANTS PERMANENT CUSTODY OF A CHILD TO A MOVANT UNDER THIS DIVISION, THE COURT, UPON THE REQUEST OF ANY PARTY, SHALL FILE A WRITTEN OPINION SETTING FORTH ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW IN RELATION TO THE PROCEEDING.

• Sec. 5103.151. (A) An annual review shall be made of every child placed in the care or custody of a public or private organization, society, association, agency, or individual certified to care for children or certified to place children pursuant to sections 5103.02 and 5103.03 of the Revised Code. This review shall be made by the agency having custody of the child, whether the custody or care arrangement is temporary or permanent, and whether the agency received custody pursuant to court order under Chapter 2151. or pursuant to section 5103.15 of the Revised Code, or whether the child is in temporary care as a consequence of the issuance of an emergency court disposition pursuant to section 2151.33 of the Revised Code.

(B) The annual review made by the agency having custody of a child shall be filed with the juvenile court that placed the child or in the case of a child placed pursuant to section 5103.15 of the Revised Code with the juvenile court of the county in which the child resides. The initial review shall be made and submitted to the court ~~within four months of the effective date of this section and with respect to placements made after the effective date of this section, the initial review shall be made and submitted within four months~~ SIXTY DAYS after placement of the child. A review shall be made annually thereafter, except that a juvenile court may order a review to be done more frequently. Every report of an annual review shall include at a minimum, an evaluation of the child based on the following:

(1) The extent of the care and support provided by the parents, or parent, while the child is in temporary custody;

(2) The extent of communication with the child by the parents, parent, or guardian;

(3) The degree of compliance by the agency with what is in the best interests of the child;

(4) A recommendation for the child that includes a plan for the future and permanent placement or custody of the child, and the methods of achieving the objective. The plan shall be framed with the objective of doing what is in the best interests of the child.

(5) The nature and utilization of any social services offered to the parent or guardian in order to restore the home and return the child to the home, whether offered by the agency having custody or care of the child, another agency, or the court;

(6) ANY OTHER FACTORS IDENTIFIED IN THE INITIAL PLAN OR COMPREHENSIVE PLAN PREPARED PURSUANT TO SECTION 2151.412 OF THE REVISED CODE.

(C) The review procedures used by each agency having custody of children shall be examined and approved by the juvenile court that receives the report of the annual review of a child from an agency or by a five-member county board appointed for that purpose by the presiding judge of the juvenile court. Every report submitted to the juvenile court shall be reviewed and evaluated by the juvenile court or the board appointed by the court, and the juvenile court or board shall, within ninety days of the filing of the report, approve the report or order it revised. If a board is appointed, it shall consist of one member representing the general public and four members who are trained or experienced in the care or placement of children by training or experience in the fields of medicine, psychology, social work, education, or related fields. Of the initial appointments made to the board, two shall be for a term ending one year after the effective date of their appointments, two shall be for a term ending two years after that date, and one shall be for a term ending three years after that date. Thereafter, terms shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term.

(D) A copy of the report, together with any revisions, shall be sent to the department of public welfare.

(E) The juvenile court that receives the annual review, upon determining, either from the annual review or otherwise, that the custody or care arrangement is not in the best interests of the child may terminate the custody of an agency and place the child in the custody of another public or private organization, society, association, agency, or individual certified pursuant to sections 5103.02 and 5103.03 of the Revised Code.

(F) The department of public welfare shall report annually to the public and to the general assembly on the results of the annual review of placement plans of each agency and on the results of the summaries submitted to the department under section 3107.10 of the Revised Code. The annual report shall

include among other information that may be required by the department:

(1) An analysis of the findings contained in the reports of the annual review of children;

(2) The number of children in care or custody and for whom an annual review was conducted, and the number of children whose custody status changed during the period;

(3) An analysis of the utilization of public social services by agencies and parents or guardians, and the utilization of the adoption listing service of the department pursuant to section 5103.152 of the Revised Code;

(4) A compilation and analysis of data submitted to the department under section 3107.10 of the Revised Code.

SECTION 2. That existing sections 2151.011, 2151.281, 2151.35, 2151.353, 2151.38, and 5103.151 of the Revised Code are hereby repealed.

SECTION 3. The second annual review made after the effective date of this act of any child who is in temporary custody upon the effective date of this act pursuant to a court order under Chapter 2151. of the Revised Code or pursuant to section 5103.15 of the Revised Code, which annual review is made pursuant to section 5103.151 of the Revised Code, shall include a comprehensive reunification plan prepared in accordance with division (D) of section 2151.412 of the Revised Code for the child if he is not abandoned or orphaned, a report on the attempts made to locate the parents of the child if he is an abandoned child, or a report on the attempts made to find a relative of the child who will take permanent custody of the child if he is an orphaned child.

Upon the filing of the second such annual review made after the effective date of this act, the court shall hold a hearing to inquire into the future plans that the agency filing the report has for the placement of the child or for the return of the child to his parents.